

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN DEBBY BARRETT**, on February 12, 2003
at 8 A.M., in Room 455 Capitol.

ROLL CALL

Members Present:

Rep. Debby Barrett, Chairman (R)
Rep. Dee Brown, Vice Chairman (R)
Rep. Larry Jent, Vice Chairman (D)
Rep. Norman Ballantyne (D)
Rep. Arlene Becker (D)
Rep. Sue Dickenson (D)
Rep. Carol Gibson (D)
Rep. Daniel S. Hurwitz (R)
Rep. Hal Jacobson (D)
Rep. Larry Lehman (R)
Rep. Ralph Lenhart (D)
Rep. Alan Olson (R)
Rep. Bernie Olson (R)
Rep. Don Roberts (R)
Rep. Clarice Schrumpf (R)
Rep. Frank Smith (D)
Rep. Pat Wagman (R)
Rep. Jonathan Windy Boy (D)
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: None.

Staff Present: Sheri Heffelfinger, Legislative Branch
Joan Reiman, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 454, HB 499, HB 513 and SB 195,
2/5/2003;

Executive Action: HB 454 and HB 461 TABLED; SB 7 BE
CONCURRED IN AS AMENDED, SB 136 MOVED TO THE CONSENT
CALENDAR (it passed on 2/3/03)

HEARING ON SB 195**Sponsor:** SEN. DUANE GRIMES, SD 20, Clancy**Opening Statement by Sponsor:**

SEN. GRIMES said this bill deals with a bronze bas relief to be on the wall of the Senate, like the Brantley relief in the old Supreme Court Chamber. It will be grandiose, from column to column in the front, a tribute to Lewis & Clark & the Corps of Discovery. Montana Historical Society oversaw the Mansfield sculpture and is now consulting with the Senate advisory group of former senators who are non-partisan volunteers. Two years ago he wanted to Commission a painting in the Senate but the Montana Lewis & Clark Bicentennial Commission came and asked to change it to a sculpture. The front of the Senate chamber is one of the few places not restored.

This sculpture would coincide with the restoration of the Capitol, the Bicentennial of Lewis & Clark and the 100 year anniversary of the House of Representative's painting. It has huge support, and no money is required. Federal and private money is potentially available, as well as the sale of limited edition replicas. The Commission wanted something all Montanans could enjoy. The bas relief will not be a particular scene, but one representing our heritage.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 13.8}

Proponents' Testimony:

Arnie Olson, Montana Historical Society Director, testified in favor and presented written testimony.

EXHIBIT (sth31a01)

Doug Monger, FWP, Parks Division Administrator, Lewis & Clark Bicentennial Commission, Capitol Grounds Advisory Group, said miniature reliefs can be sold as fund raisers similar to the Vietnam Wall Memorial and the miniature traveling exhibit.

John Lepley, Fort Benton's Lewis and Clark City Commission, said the 1976 levee was financed by selling small bronzes. This is an easy way to pay for it.

Homer Staves, Billings, Campgrounds of America and KOA, said he has been on the Lewis & Clark Bicentennial Commission for 15 years. This will preserve the legacy after the bicentennial is over. The logical place for it is Helena.

Clint Blackwood, Lewis and Clark Bicentennial Commission

Executive Director, testified in favor and said the timing is perfect to coincide with the spring 2005 anniversary. He submitted written testimony of Hal Stearns, Vice Chair of Lewis & Clark Bicentennial Commission, and Darrell Kipp, past chair of the Commission.

EXHIBIT(sth31a02)

EXHIBIT(sth31a03)

{Tape: 1; Side: A; Approx. Time Counter: 14 - 24}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. HURWITZ asked if the bas relief would be designed and built inside the Senate. **The sponsor** said it would be built in sections, brought in, then put together. **REP. BROWN** asked for a review of the Commission funding. **Mr. Blackwood** responded that there is no cost to the general fund. They have been funded for the last 4 years with annual grants from Travel Montana supplemented with outside sources. **REP. BROWN** asked how much they were funded. He replied they received \$200,000/year.

{Tape: 1; Side: A; Approx. Time Counter: 24 - 27}

Closing by Sponsor:

SEN. GRIMES said this is for the people of Montana. He commended the Commission for their work, and Mr. Lepley for his idea. This priceless heirloom would result in more visitors. He wanted possibly **REP. JENT** to carry this bill in the House.

{Tape: 1; Side: A; Approx. Time Counter: 27 - 30}

HEARING ON HB 513

CHAIRMAN BARRETT turned the gavel over to **VICE CHAIRMAN BROWN** for this meeting.

Sponsor: **REP. DEBBY BARRETT, HD 34, Southwestern Montana,**

Opening Statement by Sponsor:

REP. BARRETT said this bill concerns the open meeting laws. The intent is not to redefine agencies but to define whomever else the open meeting laws apply to. HB 94 this session gave the

definition of "agencies" but this bill might go too far and go back to redefining agencies. She would consider an amendment.

{Tape: 1; Side: A; Approx. Time Counter: 30 - 35}

Proponents' Testimony: None

Opponents' Testimony:

Harold Blattie, Montana Association of Counties (MACo) Assistant Director, said he is testifying in "light opposition" to the bill. His concern is Sec. 2, 2 (b), which is too broad and may include MACo and others who may be partly funded by public money. He questioned that it could be construed if you buy goods from a private vendor, you are included under the bill. With amendments, they would support.

Leroy Schram, Legal Counsel, Board of Regents/University System, thanked the sponsor for explaining her motivations for the bill, but he opposes because the title doesn't say what it does. It expands the reach of law in two ways. Once an entity falls under this law, they have to give prior notice and keep minutes. Any decisions made can be voided by lawsuit (Page 1, Line 26). Changing the words public "agency" to "entity" and including "officer" results in a situation where an individual is included as an entity and it does not square with a quorum if it's only one person. The AG's opinion is that a director, principal, or bureau chief is not a public agency.

The past law was aiming at "mini-legislatures" such as school boards, regents, or city councils. This bill is confusing and unnecessary, he testified. HB 94 takes care of the problem this bill may be trying to address. The second problem is Page 1, Line 30(c). The word "entity" is a vague phrase with no counterpart in current law. Entity can be anything, even two public employees talking about their job, a principal meeting with teachers, a bureau chief meeting with two employees would be covered here; it would make it impossible to operate. It would set off a new round of litigation. If the specific agencies the legislature wants covered could be named, it would help "We have a good law now; but this one does some mischief," he concluded.

Elizabeth Kaleva, Montana School Boards Association, said the definition of public entity in Sec. 2, 2(a) and (b) would be difficult to enforce and monitor. It opens the definition to any entity that spends public funds including a non-profit or for-profit with government contracts. Any meeting the Superintendent has with anyone would have to be open if he makes a decision. Under part (b), organizations using public funds could be a

private construction company with a government contract. She wants the definitions to be more limited.

{Tape: 1; Side: A; Approx. Time Counter: 40 - 53}

Informational Testimony: None

Questions from Committee Members and Responses:

REP. YOUNKIN asked if a road contractor is an organization under this bill. **REP. BARRETT** said Sec. 1 tells who they are: anyone who supervises, controls, has jurisdiction or advisory power; anyone specifically appointed by government for a duty. It is not for the daily operation of schools. **REP. YOUNKIN** asked about an officer, who is not a group and if every meeting of the Commissioner of Higher Education is subject to the law. **The sponsor** said she does not know the definition of "officer," but that the bill is for appointed groups, for example, the Montana Consensus Council. If one of their members goes to a meeting, they should notice and take minutes.

REP. YOUNKIN asked if just one member of the Board of Regents or Board of Education would come under this. **REP. BARRETT** replied that the Montana Consensus Council was created by executive order. The bill is for groups like that, but the Regents have statutory authority. It is for boards appointed by the Governor, or groups like the River Advisory Group of FWP operating on behalf of an agency. She is open to amendments. **REP. YOUNKIN** asked about lawsuits if every meeting of one regent is an open meeting; she wondered how far reaching would it be.

{Tape: 1; Side: A; Approx. Time Counter: 53 - 59}

Closing by Sponsor:

REP. BARRETT said she knew there would be opposition and has spoken with opponents. A recent court decision when 13 news agencies sued the Regents defined public body. She does not want to redefine "agencies"; she will remove or redefine "officer" She agreed with opponents that open meeting laws take time to comply with, but it is in the Constitution; they have to provide a large enough room for the public to attend.

{Tape: 1; Side: A; Approx. Time Counter: 59 - 62}

HEARING ON HB 454

Sponsor: **REP. RICK RIPLEY, HD 50**

Opening Statement by Sponsor: REP. RIPLEY said this is a short bill but it is not simple. It would allow volunteer firefighters to retire after 20 years if they are age 55 and to continue to serve without loss of benefits. Last session a bill allowed volunteers to respond to emergencies even if retired. This bill goes further to allow rural firefighters to respond to emergencies. He provided amendments to allow members to earn service credit and be covered with worker's comp and insurance benefits. Mike O'Connor also has amendments to give incentives to stay on the force. Local fire departments have a hard time staffing, REP. RIPLEY said.

EXHIBIT(sth31a04)

{Tape: 1; Side: B; Approx. Time Counter: 0 - 4}

Proponents' Testimony:

Mike O'Connor, Public Employees' Retirement System (PERS)

Executive Director, said there is a problem recruiting new members. Demographics show baby boomers in their late 50's are retiring and they don't have staff to fight fires. Generation X-ers are a smaller group. During the next 20 years the retention problem will likely remain. The Volunteer Firemen's Act is non-contributory. The money from insurance premiums tax will remain at 5%. PERS wants an alternative to solve the problem. Once firefighters achieve age 55 with 20 years, increase the retirement benefit for each year they stay. It is cost-neutral to the system.

Jerry Sheperd, W. Helena Valley Fire Department, testified it is a problem finding new members. Older workers understand the district, management, and big fires. They can be brought back in disasters such as the fires of 2000.

John Northey, Legislative Audit Division Legal Counsel, is here as an individual and a volunteer with Birdseye volunteer firefighters.

John Semle, Montana Fire Alliance, testified in favor.

Jim Greene, Disaster and Emergency Services Division Administrator, Department of Military Affairs, said they must deal with potential future terrorism.

{Tape: 1; Side: B; Approx. Time Counter: 4 - 15}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. DICKENSON asked **Mr. O'Connor** to explain the insurance premium tax which pays these benefits. He replied there is a tax on all insurance sold, 2.75% of the premium. Of that, 5% is used to fund volunteer firefighter and municipal police retirement.

REP. WAGMAN asked the sponsor regarding Line 17, if firefighters are out on disability, if they could come back in a supplemental role such as radio operator, in an emergency. He replied, "As written, yes, but not with the amendment."

REP. LEHMAN asked **Mr. Semple** if the recruiting of younger members may be hampered by returning older folks. He said the chiefs say the average service is only 8 years, so no one stays long. **REP. LEHMAN** asked if only the chief may determine who is on retired active service, whether there might be a problem if there is conflict with the chief. He replied he wanted to defer to a chief, who has more intimate knowledge of his men; he put that in the bill so older folks would not have to work beyond their means. **REP. LEHMAN** asked about cronyism. **CHAIRMAN BARRETT** said that concern is already in law.

REP. BALLANTYNE asked the sponsor if firefighters are out three to five years, if they would need training to come back. He deferred to **Mr. O'Connor**, who said they would have to have 30 hrs. training and be certified. **REP. BECKER** asked if they could increase the pension under the rules. **Mr. O'Connor** said the law would have to change to do so. **CHAIRMAN BARRETT** asked the sponsor, who said that's outside the title of the bill. **Mr. O'Connor** asked if they would like to consider a committee bill. He said his amendment gives more incentives.

{Tape: 1; Side: B; Approx. Time Counter: 15 - 25}

Closing by Sponsor:

Sponsor closed.

{Tape: 1; Side: B; Approx. Time Counter: 25 - 26}

HEARING ON HB 499

Sponsor: **REP. EVE FRANKLIN, HD 42, Great Falls**

Opening Statement by Sponsor:

REP. FRANKLIN said this simple bill gives DPHHS necessary ability to meet responsibilities of protecting safety from bioterrorism.

She gave a fact sheet. One amendment she agrees with, mentioned by Jim Green, changes "incident" to "event."

EXHIBIT(sth31a05)

{Tape: 1; Side: B; Approx. Time Counter: 26 - 30}

Proponents' Testimony:

Mike Spence, MD., submitted written testimony, and called it a housekeeping bill.

EXHIBIT(sth31a06)

Jim Green, Chair of Governor's Homeland Security Task Force, is in favor of the bill.

Joan Miles, Director of Lewis & Clark County Public Health Department, explained the bill. This gives an orderly approach, so folks know whether to go to local or state officials for permissions to act.

Beda Lovitt, Montana Medical Association, said it recognizes today's new concerns.

Raymond Berg, Montana Nurses Association, testified in favor and gave an exhibit.

EXHIBIT(sth31a07)

{Tape: 1; Side: B; Approx. Time Counter: 30 - 33}

{Tape: 2; Side: A; Approx. Time Counter: 0 - 12}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. FRANKLIN said that the Department of Justice supports the bill and she will get the amendment back to committee.

EXECUTIVE ACTION ON HB 454

Discussion:

Ms. Heffelfinger said the alternative proposal on HB 454 was outside the scope of the bill, but that they could request a committee bill.

Motion/Vote: REP. BALLANTYNE moved HB 454 BE TABLED. On a voice vote, motion carried 19-0. Voting by proxy were REPS. WINDY BOY, SCHRUMPF, YOUNKIN, LEHMAN and ALAN OLSON.

Motion/Vote: REP. LENHART moved to CREATE A COMMITTEE BILL TO ADDRESS HB 454 CONCERNS. On a voice vote, motion carried 19-0. Voting by proxy were REPS. WINDY BOY, SCHRUMPF, YOUNKIN, LEHMAN and ALAN OLSON.

{Tape: 2; Side: A; Approx. Time Counter: 12 - 14}

EXECUTIVE ACTION ON SB 7

Discussion:

Ms. Heffelfinger said the bill is back in committee as amended; their last action was to reconsider amendments they had already passed to exempt local elected officials from lobbyist registration fees. She distributed the amendment. **REP. LENHART** said he had other amendments. **CHAIRMAN BARRETT** said they need a motion.

Motion: REP. A. OLSON moved to STRIP THE AMENDMENTS FROM SB 7.

Discussion: REP. BECKER said she was confused and REP. WINDY BOY questioned the action. **CHAIRMAN BARRETT** explained they were reverting the bill to its original form, so that they could put a new amendment to it.

Vote: On a voice vote, motion carried 19-0.

Motion/Vote: REP. LENHART moved new AMENDMENTS TO SB 7. On a voice vote, motion carried 19-0.

EXHIBIT (sth31a08)

Motion/Vote: REP. A. OLSON moved SB 7 BE CONCURRED IN AS AMENDED. On a voice vote, motion carried 19-0.

Motion/Vote: REP. A. OLSON moved SB 7 BE MOVED TO THE CONSENT CALENDAR. On a voice vote, motion carried 19-0.

{Tape: 2; Side: A; Approx. Time Counter: 14 - 31}

EXECUTIVE ACTION ON SB 136

Motion/Vote: REP. A. OLSON moved SB 136 BE MOVED TO THE CONSENT CALENDAR. On a voice vote, motion carried 19-0. (SB 136 had been concurred in on February 3, 2003 by a vote of 19-0. Committee waited to report the action so that SB 7 and SB 136 could stay together).

EXECUTIVE ACTION ON HB 461**Discussion:**

REP. ALAN OLSON gave the report of the Subcommittee which met on February 11, 2003 consisting of REPS. OLSON, BROWN & SMITH. It was unanimously recommended to table HB 461 and to amend HB 13 to apply an across-the-board raise of \$.45/hr. for all but exempt state employees. This would amount to \$930/yr. each. The fiscal note would be \$13.6 million/biennium. This will leave in the full payment of employees' health insurance costs. The fiscal impact is \$22 million. The funding is contingent on HB 360 passing (early termination). He said they were more comfortable with giving \$936/yr. than a percentage raise, to help those with a family to cover.

REP. BROWN said it recognizes the low-end wage earner being hurt the worst. REP. HURWITZ asked if the university were included. REP. OLSON said it puts off the increase until January. The university goes into effect in July. The average increase for their health coverage is only \$10/mo. vs. other state employees will pay \$60/mo. more. REP. HURWITZ asked why the difference. Ms. Heffelfinger said there is a difference between classified positions, which excludes the university because the Regents handle that.

REP. YOUNKIN said neither HB 13 nor 461 would have affected the university. REP. OLSON agreed and REP. YOUNKIN said HB 360 early termination would not affect the university either, as it is drafted. REP. DICKENSON said she talked with Tom Schneider after the hearing and there are a large number of low wage earners. She asked if they could not raise the university employees without the Regents being involved. CHAIRMAN BARRETT agreed. REP. OLSON said the impact is \$13.6 million to the general fund but the total impact is \$33.27 million. Members questioned the figures. Ms. Heffelfinger explained that the pay plan in this bill is only amending the pay of nonuniversity employees, however, the Appropriations section of the fiscal note included university employees.

REP. OLSON affirmed that they are not appropriating money; they are dealing in the general fund. **Ms. Heffelfinger** stated it depends on how they coordinate the bills; HB 2 has general fund appropriation, and would cover the general fund part of their intended increase but will not appropriate for the rest of the employees. HB 360 is only effective if a personal service budget is cut from HB2; it only covers the general fund agencies. The Finance and the Appropriations Committee must look at it, since the committee's amendments don't cover funding. They need appropriations in the pay plan bill if it covers more than salaries.

REP. WINDY BOY asked for clarification among the three pay bills being discussed. He asked if HB 13 would freeze pay, but the amendments would add \$.45/hr to pay. **REP. A. OLSON** agreed and said the subcommittee is recommending HB 461 be tabled. **REP. B. OLSON** said he has concerns about using the Coal Trust money. **CHAIRMAN BARRETT** asked **Ms. Heffelfinger**, who stated that the subcommittee will prepare an amendment for what they are recommending when HB 13 and HB 360 get moved. **REP. ALAN OLSON** replied to **REP. BERNIE OLSON** that they will use HB 360 to pay for HB 13 amendments. They can add alternate funding; **REP. LEWIS** is also working with Legislative Audit Division to find alternative funding.

REP. DICKENSON said they need to remember if they endorse the subcommittee's recommendation, they are agreeing to cut 400 employees, which is a lot. **Ms. Heffelfinger** said those assumptions were made for the fiscal note but the executive branch would actually need to make the decision to cut positions. Actually they expect more to terminate, so fewer jobs could be cut. **REP. BECKER** said the union contracts are not signed. She asked if the proposal would be accepted. **REP. A. OLSON** said he cannot answer for them. **CHAIRMAN BARRETT** said that is not their job, and asked **Ms. Heffelfinger**, who explained that once the legislature appropriates funds, it creates law; but then no one gets the raise until they sign a contract. **REP. BECKER** mentioned the 1991 state workers' strike. **CHAIRMAN BARRETT** said they have always agreed and signed before.

REP. SMITH told **REP. BECKER** that Tom Schneider, all the unions and the university were represented at the hearing. He said the 400 vacancies could be filled with lower-level people moving up. **REP. DICKENSON** said the assumption was they would not re-fill the jobs. **REP. A. OLSON** asked if anyone noticed opposition at the subcommittee hearing. **REP. BROWN** said they recognized the fiscal impact and are happy for any increase, especially with health premium costs; sponsor **LEWIS** was there, too. **REP. A. OLSON** said

REP. LEWIS'S concern was to assure that they take the increased wages out of savings from retirements under HB 360. **REP. DICKENSON** said there did not seem to be opposition, but unions can't commit for their members. **CHAIRMAN BARRETT** asked REP. A. OLSON to work on the amendment which Ms. Heffelfinger will prepare.

Motion: **REP. ALAN OLSON** moved **HB 461 BE TABLED**. On a voice vote, motion **carried 15-4**. Voting no were **REPS. JENT, WINDY BOY, GIBSON and JACOBSON**.

Discussion:

CHAIRMAN BARRETT asked if they wanted to discuss others. **REP. BECKER** suggested SB 136. **Ms. Heffelfinger** referred to SB 7, Page 2, Lines 4-5; they need to coordinate instructions with HB 114 which passed. She wanted to see if they have to amend SB 195.

Submitted as an exhibit was a letter from State Auditor John Morrison answering committee's questions about his employees holding other jobs to make ends meet.

EXHIBIT (sth31a09)

{Tape: 2; Side: A; Approx. Time Counter: 30 - 33}

{Tape: 2; Side: B; Approx. Time Counter: 0 - 20}

ADJOURNMENT

Adjournment: 10:40 A.M.

REP. DEBBY BARRETT, Chairman

JOAN REIMAN, Secretary

DB/JR

EXHIBIT (sth31aad)